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No. 29

March 6, 2006

S. 2349 – Legislative Transparency and Accountability Act of 2006

Calendar No. 367

Ordered reported by the Committee on Rules and Administration on February 28, 2006, by a vote of 17 to 0; no written report.

NOTEWORTHY

- On Monday, March 6, 2006, the Senate is expected to proceed to the consideration of S. 2349, the Legislative Transparency and Accountability Act of 2006.
- On February 28, 2006, the Committee on Rules and Administration marked up the bill and ordered it favorably reported to the Senate by unanimous vote.
- On March 2, 2006, the Homeland Security and Governmental Affairs Committee marked up S. 2128, the Lobbying Transparency and Accountability Act of 2005, and ordered the bill favorably reported with a bipartisan substitute.
- The managers are expected to offer a joint substitute amendment that combines the provisions of S. 2349 and S. 2128, as reported by their respective committees.
- The Rules Committee bill amends the Senate rules to enhance disclosure of legislative earmarks as well as travel and meals provided to Members and staff by lobbyists. The HSGA Committee bill modifies statutes governing the disclosure of lobbying activities, limitations imposed on travel and meals provided by lobbyists, and post-employment restrictions for Members and staff.
- No unanimous consent agreement has been entered with respect to time or the consideration of amendments to the bill.

Background

A fundamental tenet of the American legal system is the First Amendment's prohibition against any law abridging the freedom of speech, the right of the people to peacefully assemble, and to petition the government for a redress of grievances.¹ Consistent with these constitutional rights, however, Congress has regulated lobbying activities, primarily through the Lobbying Disclosure Act of 1995 (LDA),² as amended by the Lobbying Disclosure Technical Amendments Act of 1998.³

The LDA generally requires lobbyists who are compensated for their actions, whether individuals or firms, to register and file semiannual reports of their activities with the Secretary of the Senate and the Clerk of the House. These reports identify the name of the registrant lobbyist, client, and the broad issue areas that were the subject of the lobbying activity.⁴

The rules of the Senate and House also impose strict limitations on Members, officers, and employees of each body with respect to gifts and travel provided by third parties, which are often associated with lobbying.⁵ In general, Members and staff may not accept gifts (including travel and personal hospitality), reimbursements, or payments of their expenses (other than from relatives or personal friends).⁶ The Senate and House Rules do, however, permit *de minimis* gifts valued under \$50 from private sources, with a maximum of \$100 per calendar year from any one source, with gifts under \$10 generally excluded. Some travel expenses provided by outside, third parties may also be accepted under limited circumstances if the travel is "officially connected." Travel by staff must be authorized in writing and in advance by the supervising Member.

The Ethics Reform Act of 1989 added post-employment restrictions for Members and certain senior congressional staff, effective January 1, 1991.⁷ Under this criminal statutory law, individuals who were Members of Congress are prohibited from "lobbying" or making advocacy communications on behalf of any other person to current Members of either House of Congress, or to any legislative branch employee, for one year after the individual leaves Congress. Additionally, senior staff employees are subject to certain one-year "cooling off" periods regarding their advocacy contacts with their former offices. And, both former Members and former senior staff also are limited in representing official foreign interests before the United

¹U.S. Constitution, Amendment I.

²P.L. 104-65, 109 Stat. 691, December 19, 1995.

³P.L. 105-166, 112 Stat. 38, April 6, 1998.

⁴For background on the LDA, see Congressional Research Service, "Lobbying Reform: Background and Legislative Proposals 109th Congress," RL33065, February 21, 2006 – <http://www.congress.gov/erp/rl/pdf/RL33065.pdf>.

⁵House Rule XXV, Clause 5 and Senate Rule XXXV.

⁶For a discussion of the current rules governing gifts and third-party sponsored travel, see CRS, "Congressional Gifts and Travel: Proposals in the 109th Congress," RL33237, January 24, 2006 – <http://www.congress.gov/erp/rl/pdf/RL33237.pdf>.

⁷P.L. 101-194, Title I, § 101(a), 103 Stat. 1716, November 30, 1989, as amended.

States government, and in taking part in certain trade and treaty negotiations, for one year after leaving congressional service.⁸

The Senate Committee on Rules and Administration met on February 28, 2006 to mark up legislation to revise the Senate ethics rules as well as other lobbying restrictions under the committee's jurisdiction. The Committee ordered the Legislative Transparency and Accountability Act of 2006, S. 2349, favorably reported to the Senate on February, 28, 2006. In addition, the Homeland Security and Governmental Affairs Committee (HSGA Committee) marked up the Lobbying Transparency and Accountability Act of 2005, S. 2128, introduced by Senator McCain, and ordered the bill favorably reported with a bipartisan substitute on March 2, 2006.

Bill Provisions

The following is a summary of S. 2349, the Legislative Transparency and Accountability Act of 2006, as reported by the Rules Committee. The measure reported by the HSGA Committee is expected to be added to S. 2349 during the Senate's consideration of the legislation. A description of that measure is included in the Possible Amendments section below. For additional information on both bills, see Congressional Research Service, "Lobbying and Related Reform Proposals: Consideration of Selected Measures, 109th Congress," RL33293, March 3, 2006 – <http://www.congress.gov/erp/rl/pdf/RL33293.pdf>.

Out-of-Scope Matters: The bill provides a new point of order against out-of-scope matters in Conference Reports, which could be waived by 60 votes. If the point of order were sustained, the offending material would be deleted from the Conference Report and returned to the House for its concurrence.

Earmarks: The bill includes a new Standing Rule of the Senate dealing with earmarks. Earmarks are defined as "a provision that specifies the identity of a non-Federal entity to receive assistance. . . ." "Assistance" is defined to include budget authority, contract authority, loan authority, and other expenditures including tax expenditures or other revenue items. The new rule requires that all Senate bills or conference reports include a list of all earmarks in the measure, an identification of the Member who proposed the earmark, and an explanation of the essential government purpose of the earmark. The new rule also requires that the bill or Conference Report, including the list of earmarks, be available to the Senate and to the general public on the Internet for at least 24 hours before its consideration. The effective date of this Section would be 60 days after the enactment of the Act.

⁸For a discussion of the post-employment restrictions on Congressional Members and staff, see CRS, "Revolving Door," Post-Employment Laws for Federal Personnel, 97-875, updated March 11, 2003 – <http://www.congress.gov/erp/rl/pdf/97-875.pdf>.

Floor Privileges for Members: The bill amends Senate Standing Rule XXIII to eliminate floor privileges for former Members, former Senate Officers, and former Speakers of the House who are either registered lobbyists or employed by an entity for the purpose of influencing the passage, defeat, or amendment of any legislative proposal. The Senate Rules Committee would be permitted to issue regulations allowing floor privileges for such individuals for ceremonial functions or events designated by the Majority and Minority Leader.

Ban on Gifts from Lobbyists: The bill amends Standing Rule XXXV to ban gifts from registered lobbyists or foreign agents. An exception is provided for meals and refreshments, retaining the current financial limits. Members would be required to post on their website the value of such meals and refreshments provided to them and/or their staff, and the person who paid for the meal within 15 days of receiving them.

Travel Restrictions and Disclosure: The bill amends Standing Rule XXXV to require advance approval by the Senate Select Committee on Ethics of any transportation or lodging provided by a third party, other than travel sponsored by a governmental entity. The person providing the transportation and lodging would have to certify that the trip was not financed, in whole or in part, by a registered lobbyist or foreign agent and that the person sponsoring the trip did not accept (directly or indirectly) funds from a registered lobbyist or foreign agent earmarked to finance the trip.

In addition, a detailed trip itinerary would have to be provided to the Ethics Committee along with a written determination by the Senator that the trip is primarily educational, consistent with official duties, does not create an appearance of use of public office for private gain, and has a minimal, or no, recreational component. Not later than 30 days after the trip is completed, the Member would have to file with the Ethics Committee and the Secretary of the Senate a description of the meetings and events attended during the trip and the name of any registered lobbyist who accompanied the Member during the trip. Such information also would have to be posted on the Member's Senate website, although disclosure would not be required if it would jeopardize the safety of an individual or adversely affect national security.

The bill also amends Standing Rule XXXV to require that a Member or employee who is provided a flight on a private aircraft, other than an aircraft that is owned, operated, or leased by a governmental entity, file a publicly available disclosure report with the Secretary of the Senate identifying the date, destination, and owner or lessee of the aircraft, the purpose of the trip, and the persons on the trip, except those flying the aircraft. A similar disclosure, without an exclusion for government flights, would be required to be made to the Federal Election Commission if such a flight took place as part of a federal election campaign.

Post-employment Restrictions: The bill amends Standing Rule XXXVII to conform the post-employment registered lobbyist restrictions on Senate staff earning 75 percent of the rate of pay of a Member with the restrictions imposed on former Senators. Such staff would be prohibited from lobbying the entire Senate for one year after their employment terminates. This provision would be effective 60 days after the date of enactment.

The bill also amends Standing Rule XXXVII to require that a Member who is engaged in prospective private (i.e., non-governmental) employment negotiations, prior to the election of the Senator's successor, must file a public disclosure statement with the Secretary of Senate regarding such negotiations within three business days after the commencement of such negotiations.

Additional Lobbying Restrictions: The bill amends Standing Rule XXXVII to provide that, if a Member's spouse or immediate family member is a registered lobbyist or employed by a registered lobbyist, then staff employees of the Member are prohibited from having any official contact with the Member's spouse or immediate family member. "Immediate Family Member" is defined as the son, daughter, stepson, stepdaughter, son-in-law, daughter-in-law, mother, father, stepmother, stepfather, mother-in-law, father-in-law, brother, sister, stepbrother, or stepsister of the Member.

The bill also amends Standing Rule XLIII to prohibit a Member from seeking to influence, on the basis of political affiliation, an employment decision of any private entity by taking or withholding or offering or threatening to take or withhold an official act, or to influence or offer or threaten to influence, the official act of another.

The bill includes a Sense of the Senate Resolution that any applicable restrictions on Congressional employees should apply to the Executive and Judicial branches.

Effective Date: The bill would take effect on the date of enactment, except those provisions in which a different enactment date is provided.

Cost

At press time, a determination by the Congressional Budget Office of the bill's budget impact was not available. It is expected that any impact will be negligible.

Administration Position

A Statement of Administration Policy (SAP) on the bill was not available at press time.

Possible Amendments

Lobbying Transparency and Accountability Act of 2006 (S. 2128). As noted above, the HSGA Committee reported the Lobbying Transparency and Accountability Act on February 28, 2006. The principal provisions of this legislation, which are expected to be added to the bill, are described below.

- **Lobbying Disclosure:** The bill requires electronic filing of lobbying-disclosure reports on a quarterly basis, rather than semi-annual disclosures currently required under the LDA, and it reduces the amounts of income and expenditures that trigger registration by lobbyists to reflect shorter disclosure periods. The bill also requires disclosure in quarterly reports of whether a lobbyist has ever worked as a covered executive or legislative-branch official. (Current law requires disclosure only for two years following employment with the executive or legislative branches.) This provision would be effective on January 1, 2007.
- **Campaign-Contribution Disclosure:** The bill requires each registrant to make an annual disclosure of contributions to federal candidates and officeholders, their leadership PACs, and political party committees. The bill also requires disclosure of fund-raising events hosted, co-hosted, or otherwise sponsored by registrants. This provision would be effective on January 1, 2007.
- **Electronic Databases:** The bill requires that the Senate and House create an electronic database containing lobbying registration and reporting information available to the public over the Internet. Electronically filed lobbying-disclosure reports would be made available over the Internet within 48 hours of filing. This provision would be effective on January 1, 2007.
- **Travel Disclosure:** The bill requires new quarterly disclosures of payments by lobbyists, lobbying firms, and lobbying organizations registered under the LDA with respect to travel. Registrants and their employees listed as lobbyists would have to report travel by executive and legislative branch officials for which the registrant provided, or directed or arranged to be provided, payment or reimbursement. Registrants and their employees listed as lobbyists would have to report contributions (1) for events to honor or recognize executive or legislative branch officials; (2) to or on behalf of entities named for executive or legislative branch officials; (3) to entities established, financed, maintained, or controlled by legislative or executive branch officials; or (4) to pay the costs of meetings, retreats, conferences, or similar events held by or for the benefit of legislative or executive branch officials. Lobbyists would be required to make travel disclosures not later than 30 days after the travel. This provision would be effective on January 1, 2007.
- **Fines:** The bill increases the maximum civil fine for violations of the LDA from \$50,000 to \$100,000. This provision would be effective on January 1, 2007.
- **Coalitions and Associations:** The bill requires disclosure by organizations that: (1) contribute \$10,000 or more to a coalition or association registered under the LDA, and (2) participate in a substantial way in the management of lobbying activities. (Current law requires disclosure only if an organization “in whole or in major part plans, supervises, or controls such lobbying activities.”) This provision would be effective on January 1, 2007.
- **Disclosure of Enforcement for Non-compliance:** The bill requires the Secretary of the Senate and the Clerk of the House to disclose the number of referrals to the Justice Department for enforcement, and the Justice Department to disclose the number of enforcement actions undertaken on those referrals.

- **Grassroots Lobbying:** The bill requires grassroots lobbying firms to report paid efforts to stimulate grassroots lobbying if they receive payment in excess of \$25,000 in a quarter for the effort and the lobbying is directed to at least 500 members of the public. The bill defines “paid efforts to stimulate grassroots lobbying” as any paid attempt in support of lobbying contacts on behalf of a client to influence the general public or segments thereof to contact one or more covered legislative or executive branch officials (or Congress as a whole) to urge such officials (or Congress) to take specific action with respect to specific issues or proposals, as defined under the LDA.

The new requirement does not apply to communications by an organization directed only to its own members, employees, officers, or shareholders. No member of a grassroots lobbying coalition would be subject to disclosure solely for contributing to the coalition. To be subject to the new disclosure requirements, a coalition member must contribute at least \$10,000 to the lobbying activities of the coalition, and must have a substantial role in the direction of lobbying activities. This provision would be effective on January 1, 2007.

- **Comptroller General Audit and Annual Report:** The bill directs the Comptroller General to review and audit on an annual basis the activities under the LDA and provide recommendations to improve compliance and identify needed resources and authorities.
- **Mandatory Senate Ethics Training for Members and Staff:** The bill requires mandatory ethics training for Members and staff. Current Members and staff would be required to complete training within 120 days of the date of enactment. Newly elected Members and appointed staff would be required to complete training within 60 days of election or appointment.
- **Self-regulation within the Lobbying Community:** The bill expresses the Sense of the Senate that the lobbying community should develop proposals for multiple self-regulatory organizations that could provide for (1) the creation of standards appropriate to the type of lobbying and individuals to be served; (2) training for the lobbying community on the LDA; (3) the development of educational materials for the public on how to hire a lobbyist or firm responsibly; (4) standards regarding reasonable fees to clients; (5) the creation of a third-party certification program that includes ethics training; and (6) disclosure of requirements to clients regarding fee schedules and conflict of interest rules.
- **Annual Ethics Committees Reports:** The Senate and House ethics committees would be required to issue an annual report no later than January 31 of each year, describing the following: (1) the number of alleged violations of Senate or House rules; (2) the number of alleged violations that were dismissed for various reasons; (3) the number of complaints in which the ethics committee staff conducted a preliminary inquiry; (4) the number of complaints that staff presented to the committee with recommendation that the complaint be dismissed; (5) the number of complaints that the staff presented to the committee with recommendation that the investigation proceed; (6) the number of ongoing inquiries; (7) the number of complaints that the committee dismissed for lack of substantial merit; (8) the number of private or public letters of admonition issued; and (9) the number of matters resulting in disciplinary sanctions.

- **Slowing the Revolving Door:** The bill extends the “revolving door” provisions from one year to two years for Members of Congress and very senior executive branch officials. For covered congressional staff (personal, leadership, and committee staff whose rate of pay is at least 75 percent of the basic pay for Members of Congress), the bill expands the limitation on lobbying contacts to the entire body by which the individual was previously employed. (Currently the limitation generally applies only to the individual’s former employer or employing entity.)
- **Ban on Gifts or Travel from Lobbyists:** The bill bans lobbyists from providing travel and gifts to Members and staff, except in conformance with House and Senate rules. Currently, Senate Rule XXXV and House Rule XXV state that Members and staff may accept no gift more than \$50 and no more than \$100 of gifts from one source annually. Registered lobbyists and agents of a foreign principal may not pay for travel. Travel must be in connection with a Member’s duties, must not create the appearance of using public office for private gain, and must be disclosed. Note that the bill reported by the Rules Committee would ban all gifts except for meals and refreshments, which would remain subject to the financial limits under current law.
- **Ethics Commission:** The bill would establish a legislative-branch commission, to be known as the “Commission to Strengthen Confidence in Congress,” which would evaluate the effectiveness of current congressional ethics requirements and make recommendations for improvements. The Commission would be required to submit its initial report to Congress no later than July 1, 2006, with annual reports thereafter, until a majority of the Commission members determine that the reasons for establishing the Commission no longer exist.

The commission would be composed of 10 members (five Democrats and five Republicans) appointed by the Senate and House leadership. The commission would have the authority to hold hearings, issue subpoenas, and obtain information from any agency of the federal government. The commission would have authority to such staff, experts, and consultants as it determines, and the bill authorizes such funds as are necessary to carry out the responsibilities of the commission.

Honest Leadership and Open Government Act of 2006 (S. 2180). Democrats are likely to offer provisions from Senator Reid’s package of lobbying reforms, including: a two-year ban on post-employment activities by former Members and staff; inclusion of meals in the ban on gifts from lobbyists; disclosure of employment negotiations by senior staff; disclosures with respect to grassroots lobbying; disclosures by coalitions and associations; and new enforcement mechanisms for lobbying restrictions (e.g., proposed Senate Office of Public Integrity).

Office of Public Integrity. Senators Collins, McCain, Lieberman, and Obama are likely to offer an amendment to create a new congressional Office of Public Integrity. The amendment is expected to provide that the office would be an independent congressional agency that reports to the Senate and House ethics committees. In addition, the amendment would likely authorize the office to undertake such activities as: receiving and auditing financial disclosure and lobbying reports, investigating alleged violations of the Ethics in Government Act and the LDA (including the issuance of subpoenas and taking of depositions and witness testimony),

presenting cases of probable violation to the House and Senate ethics committees, referring cases of possible violations to Federal and state authorities, providing formal and informal guidance on ethics matters to Members and staff, and advising lobbyists about reporting requirements under the LDA.

Ban on lobbyist involvement in certain campaign activities. Senator Feinstein is likely to offer an amendment prohibiting a registered lobbyist from directing or overseeing a Member's campaign committee or fundraising operations. Lobbyists would also be barred from directing or overseeing a leadership political action committee (PAC).

Earmarks. Senators McCain may offer amendments to expand the provisions in the bill relating to earmarks. These modifications are likely to follow the provisions of S. 2265, the Pork-Barrel Reduction Act of 2006, including a point of order against unauthorized earmarks and policy riders, a prohibition against Federal agencies' obligating funds for appropriations earmarks included only in congressional reports, disclosure by recipients of federal dollars of amounts expended on registered lobbyists, and disclosure of Members requesting earmarks that are included in a bill or conference report.

Reimbursement rate for Members' use of corporate aircraft. Senator Santorum is expected to offer an amendment that would require Members, officers, and employees to reimburse the owner of a corporate aircraft on which they travel. The reimbursement would be based on the pro rata share of the charter rate for such aircraft.

Electronic database. Senator Levin is expected to offer a bipartisan amendment that would require the lobbying-disclosure reports by foreign lobbyist to be included in the electronic database established by the HSGA Committee's legislation. (Due to jurisdictional limits, S. 2128 reported by the HSGA Committee only reaches disclosure reports filed by domestic lobbyists.)

Reverse revolving door. Senator Dayton is likely to offer an amendment that would require a Member, who worked as a lobbyist prior to being elected to Congress, to recuse himself for two years from official actions relating to his previous employment as a lobbyist.